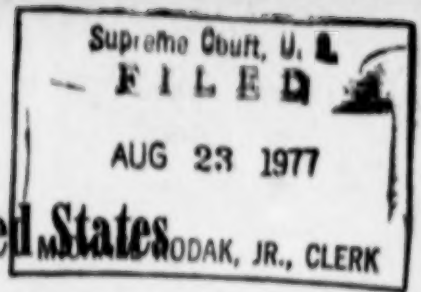


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IN THE
Supreme Court of the United States

October Term, 1977

No.**77-303**

THOMAS J. PALMER, INC., LAKE CONSTRUCTION CO.,
INC., KENNETH G. WALKER and THOMAS J. PALMER,
Petitioners,

vs.

CROCKER NATIONAL BANK and SUPERIOR COURT OF THE
STATE OF CALIFORNIA FOR THE COUNTY OF LOS
ANGELES,

Respondents.

**Petition for a Writ of Certiorari to the Supreme Court
of the State of California.**

BAUM & COHEN,
LEONARD P. BAUM,

9100 Wilshire Boulevard,
Suite 509, East Tower,
Beverly Hills, Calif. 90212,
(213) 273-4051 — 272-0614,

Attorneys for Petitioners.

SUBJECT INDEX

	Page
Opinion Below	1
Jurisdiction	2
Questions Presented	2
Statutory Provision Involved	2
Statement of the Case	3
Reasons Relied on for Allowance of the Writ	6
Conclusion	8

APPENDIX

Exhibit A. Decision of the Court of Appeal of the State of California	App. p. 1
Exhibit B. Final Order of California Supreme Court, Dated May 26, 1977	13
Exhibit C. Preliminary Injunction, Dated Novem- ber 15, 1976	14

TABLE OF AUTHORITIES CITED

Cases	Page
Capital National Bank of Lincoln v. First National Bank of Cadiz, 172 U.S. 425	6
Drewes & Co. v. Ham & Seymour (1925) 157 La. 861, 103 So. 241	6
Earle v. Commonwealth of Pennsylvania, 178 U.S. 449, 20 S.Ct. 915, 44 L.Ed. 1146	6
First National Bank of Oakland v. Superior Court of Santa Clara County (1966) 240 Cal.App.2d 109, 49 Cal.Rptr. 358	6
Korn Exchange Bank v. Blye (1896) 4 N.E. 635, 101 N.Y. 303	6
Monmouth First National Bank v. Dunbar (1887) 9 N.E. 186, 118 Ill. 625	6
Patek v. Patek (1911) 166 Mich. 433	6
Union Oil Company of California v. Basalt Rock Company, Inc. (1939) 30 Cal.2d 317, 86 P.2d 139	7
Dictionaries	
Black's Law Dictionary (4th Ed.) West Publ. Co., p. 151	7
Webster's Seventh New Collegiate Dictionary (1971), p. 53	7
Statutes	
United States Code, Title 12, Sec. 91	
.....2, 3, 5, 6, 7,	8
United States Code, Title 28, Sec. 1257(3)	2

IN THE Supreme Court of the United States

October Term, 1977
No.

THOMAS J. PALMER, INC., LAKE CONSTRUCTION CO.,
INC., KENNETH G. WALKER and THOMAS J. PALMER,
Petitioners,

vs.

CROCKER NATIONAL BANK and SUPERIOR COURT OF THE
STATE OF CALIFORNIA FOR THE COUNTY OF LOS
ANGELES,

Respondents.

Petition for a Writ of Certiorari to the Supreme Court of the State of California.

Petitioners respectfully pray that a writ of certiorari issue to review the final order of the Supreme Court of the State of California entered herein on May 26, 1977 denying petitioners' "Petition for Hearing on Peremptory Writ of Prohibition Issued by the Court of Appeal of the State of California, Second Appellate District."

Opinion Below.

The order of the court below had the effect of affirming the reported decision of the Court of Appeal of the State of California, filed April 1, 1977 (appended hereto, *infra*, Appendix, Exhibit "A", p. 1).

Jurisdiction.

The final order of the California Supreme Court was made and entered on May 26, 1977 (appended hereto, *infra*, Appendix, Exhibit "B"; p. 13). The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1257(3).

Questions Presented.

(1) Does 12 U.S.C. 91 of the National Bank Act deprive a California State Court of jurisdiction to issue a preliminary injunction enjoining a national bank, prior to final judgment, where property of such bank is not involved?

(a) Does an order enjoining a national bank from paying a creditor, pursuant to a letter of credit, affect the property of the bank or the property of the creditor?

(2) Does 12 U.S.C. 91 immunize a national bank from responsibility for knowingly aiding or abetting others in the violation of a preliminary injunction issued prior to final judgment?

Statutory Provision Involved.

The statutory provision involved is 12 U.S.C. 91 which provides, in pertinent part:

" . . . no attachment, injunction, or execution, shall be issued against such association or its property before final judgment in any suit, action, or proceeding, in any state, county, or municipal court."

The word "association", as used, refers to national banks such as Crocker National Bank.

Statement of the Case.

Pursuant to a verified complaint filed by the Real Parties in Interest, Petitioners herein, seeking injunctive relief and damages in excess of half a million dollars, the Superior Court of the State of California issued, after hearing, its Preliminary Injunction, dated November 15, 1976 (appended hereto, *infra*, Appendix, Exhibit "C", p. 14).

The Preliminary Injunction enjoined the defendants, including Crocker National Bank, and their officers, agents, representatives and all persons acting in concert or participating with them from engaging in, committing or performing, directly or indirectly, or by any means whatsoever, any of the following acts:

(a) From disbursing or paying or causing to be disbursed or paid, any sums of money, credit or other emoluments under or pursuant to any of the provisions of that certain letter of credit represented or evidenced by a written "application and security agreement for a commercial letter of credit" dated December 4, 1975, No. 737415, and/or a letter of credit dated December 4, 1975, and/or an amendment thereto dated December 5, 1975; issued by Crocker National Bank, a copy of said documents being attached to the application made herein.

(b) From engaging in any act or omission to act which might cause any honoring of said letter of credit or which might cause the disbursement of any money, credit or other emoluments thereunder by Crocker National Bank.

The decision of the Court below, relying *solely* on the "prohibition" of 12 U.S.C. 91, dissolved the Preliminary Injunction as to Crocker National Bank *only*, and let it stand as to all other defendants.

The verified complaint sets forth, among other matters, that Petitioners herein procured a letter of credit in the amount of \$522,000.00 from Crocker National Bank; the beneficiary of the letter of credit was defendant *Turkiye Is Bankasi AS* (Turkish Bank). The letter of credit was in the nature of a performance bond to guaranty the sale of coal under a contract between defendant *Turkiye Demir Ve Celik Isletmeleri Genel Mudurlugu* (Steel Works), as buyer, and a company known as *Natisco*, as seller. Petitioners herein were not parties to the contract between the "Steel Works" and "Natisco".

In the event of a breach of the contract relating to the purchase and sale of coal, the *purchaser* (Steel Works) can make demand upon the "Turkish Bank" for \$522,000.00; in turn the "Turkish Bank" can make demand upon Crocker National Bank for \$522,000.00 under the letter of credit and Crocker National Bank can, in turn, make demand upon Petitioners herein for \$522,000.00.

The verified complaint alleges a conspiracy and fraud between the "Steel Works" and the "Turkish Bank" to wrongfully cause the "Turkish Bank" to pay \$522,000.00 to the "Steel Works" and to demand a like sum from Crocker National Bank under the letter of credit; Crocker National Bank will, in turn, demand such sum from Petitioners.

No breach or violation of the contract relating to the sale of coal has occurred by *Natisco* and any demand upon the letter of credit is improper and unconscionable.

At present the Preliminary Injunction restrains the "Steel Works" and the "Turkish Bank" from engaging

in any conduct which might cause Crocker National Bank to pay under the letter of credit; it also enjoins *all others* from acting or participating with them, directly or indirectly, or by any means whatsoever, in any conduct which might cause Crocker National Bank to honor the letter of credit procured by Petitioners.

However, the Preliminary Injunction has been dissolved as to Crocker National Bank *only*, and notwithstanding the validity of the injunction as to the "Turkish Bank" and Turkish "Steel Works", Crocker National Bank will pay under the letter of credit upon demand of the "Turkish Bank" and will in turn make demand upon Petitioners for a like amount.

Although the injunction enjoins "all others" from aiding or abetting the "Steel Works" or "Turkish Bank" from making demand upon the letter of credit or causing it to be paid, Crocker National Bank states it will pay under the letter of credit if demand is made upon it and feels it can do so with impunity under the immunity provisions of 12 U.S.C. 91 as interpreted by the Court below.

We have here a situation where a national bank, under the guise of 12 U.S.C. 91, will aid and abet others, lawfully enjoined, in the violation of a Preliminary Injunction.

The bank, having knowledge of the valid Preliminary Injunction, should not be allowed to knowingly engage in conduct which will frustrate and render impotent the properly exercised injunctive powers of a state court.

The letter of credit here involved represents an obligation, a contingent account payable, of Crocker National Bank to the "Turkish Bank"; a liability, not an asset.

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT.

This Court has held that a state court can issue an injunction against a national bank where such injunction does not relate to the "bank's assets". (*Earle v. Commonwealth of Pennsylvania*, 178 U.S. 449, 454, 20 S.Ct. 915, 44 L.Ed. 1146; *Capital National Bank of Lincoln v. First National Bank of Cadiz*, 172 U.S. 425).

The same limitation on 12 U.S.C. 91 has long been recognized by state courts. (*First National Bank of Oakland v. Superior Court of Santa Clara County*, (1966), 240 Cal.App.2d 109, 49 Cal.Rptr. 358; *Korn Exchange Bank v. Blye* (1896), 4 N.E. 635, 101 N.Y. 303; *Monmouth First National Bank v. Dunbar* (1887) 9 N.E. 186, 118 Ill. 625; *Drewes & Co. v. Ham & Seymour* (1925) 157 La. 861, 103 So. 241; *Patek v. Patek* (1911), 166 Michigan 433).

The letter of credit here involved represents an *account payable* of the national bank to the "Turkish Bank". It is an asset (a contingent account receivable) of the "Turkish Bank" and a liability (a contingent account payable) of the national bank.

"Assets" are defined as follows:

"The aggregate of available property, stock in trade, cash, etc., belonging to a merchant or mercantile company. . . . The term 'assets,' as applied to a bank, is broad enough to cover anything which is or may be available to pay creditors; but, as usually understood, it refers to the tangible property of the corporation, and not to the liability of the stockholders contingent upon insolvency. *Hill v. Smothers*, 173 N.C.

642, 92 S.E. 607, 609; *Deariso v. Mobley*, 38 GA.App. 313, 143 S.E. 915, 920." (*Black's Law Dictionary* (4th Ed.) West Publ. Co., p. 151).

Webster's Seventh New Collegiate Dictionary (1971), p. 53, defines "Asset" as follows:

"The entire property of all sorts of a person, association, corporation, or estate applicable or subject to the payment of his or its debts."

"Liability" is defined in *Union Oil Company of California v. Basalt Rock Company, Inc.* (1939) 30 Cal.2d 317, 86 P.2d 139, 141, as follows:

"Liability is a condition which creates a legal duty to perform an act, but the performance may be immediate or in the future. 36 Cor.Jur., p. 1050 et seq."

The letter of credit here involved represents an obligation (liability) of Crocker National Bank to pay \$522,000.00 to the "Turkish Bank" upon the happening of certain specified acts. It is not an asset of Crocker National Bank; it is not available to the national bank for payment to its creditors.

12 U.S.C. 91 does not preclude a state court from enjoining payment by a national bank to one of its alleged creditors, i.e., the "Turkish Bank".

In the instant case the defendants "Turkish Bank" and "Steel Works" are enjoined from taking any action which might cause the national bank to pay under the letter of credit; yet, 12 U.S.C. 91 as applied by the court below will allow the bank to pay under the letter of credit (as it states it will) if demand is made upon it, and thus render the Preliminary Injunc-

tion impotent and completely frustrate the injunctive process of the state court, irreparably damaging Petitioners.

The Preliminary Injunction does not involve the property or asset of a national bank. 12 U.S.C. 91 does not allow a national bank to knowingly aid and abet others in the violation of a valid preliminary injunction; a situation which will occur if the decision of the court below is allowed to stand.

Conclusion.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

BAUM & COHEN,

By LEONARD P. BAUM,

Attorneys for Petitioners.

APPENDIX.

Exhibit "A". Decision of the Court of Appeal of the State of California.

**IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION ONE**

CROCKER NATIONAL BANK, Petitioner, v. SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES, Respondent.

THOMAS J. PALMER, INC., LAKE CONSTRUCTION CO., INC., KENNETH G. WALKER, and THOMAS J. PALMER, Real Parties in Interest. 2d Civil No. 49909 (Sup. Ct. No. SOC 44418).

Filed: April 1, 1977.

Morrison & Foerster, Girvan Peck and Ronald R. Brot for Petitioner.

No appearance for Respondent.

Baum & Cohen and Leonard P. Baum for Real Parties in Interest.

INTRODUCTION

Petitioner Crocker National Bank (hereinafter Crocker) is a defendant in a civil action filed in the superior court (Los Angeles Superior Court No. SOC 44418) in which the plaintiffs (Thomas J. Palmer, Inc., Lake Construction Co., Inc., Kenneth G. Walker, and Thomas J. Palmer) are the real parties in interest herein.

The underlying complaint (No. SOC 44418) of the real parties in interest sounding in breach of contract and fraud prays for money damages against all defendants except Crocker. As to defendant Crocker, it prays for a temporary restraining order, preliminary injunction and permanent injunction forever enjoining defendant Crocker from borrowing or otherwise disbursing sums of money under the terms and provisions of a certain \$522,000 letter of credit.

The superior court granted the preliminary injunction and petitioner Crocker seeks a writ of prohibition directing that court to vacate its order granting the injunctions.¹

THE CASE

The facts and positions of the parties can reasonably be gleaned from the record as set out below.

The underlying verified complaint (No. SOC 44418) filed by plaintiffs (real parties in interest) which was considered by the court below alleges that Natisco, a joint venture comprised of two Alabama corporations, entered into a contract to sell coal (hereinafter Coal Sales Contract) to defendant Turkish Iron and Steel Works (hereinafter Turkish Steel), and that the Coal Sales Contract required that the buyer, Turkish Steel, provide the seller, Natisco, with a letter of credit for the payment of the coal and in addition, required

¹This court previously denied Crocker's petition for writ of prohibition upon the ground that there was a remedy by appeal. However, the California Supreme Court granted a petition for hearing and transferred the cause to this court with the direction that an alternative writ of prohibition issue. Under the circumstances it is not necessary to discuss the propriety of relief by writ of prohibition. (*Atlantic Richfield Co. v. Superior Court* (1975) 51 Cal.App.3d 168, 170.)

that Natisco, as seller, guarantee its performance by way of a letter of bank guaranty.

The complaint further alleges that in a separate contract (hereinafter Financing Contract) plaintiffs agreed to furnish a letter of credit in the amount of \$522,000 in order to satisfy Natisco's guaranty of performance obligation under the Coal Sales Contract; that in return, Natisco, the two Alabama corporations which formed Natisco, defendant Vulcan Energy Resources, a corporation, and defendant Charles S. Pettyjohn, an individual, agreed to furnish plaintiffs with a true copy of a \$243,000 letter of credit allegedly previously secured as part of the seller's performance guaranty under the Coal Sales Contract; that in addition the same parties agreed, inter alia, to give plaintiffs security interests in certain coal, a pledge of stock in the two Alabama corporations which had formed Natisco, the right to certain dollar amounts per ton of coal sold under the Coal Sales Contract and the assignment of Turkish Steel's letter of credit; that the terms and provisions of the Coal Sales Contract were not to be altered, amended or changed without the prior written consent of one of the plaintiffs.

It is further alleged that on December 4, 1975, plaintiffs arranged to have Crocker issue an irrevocable letter of credit in the amount of \$522,000 in favor of the beneficiary, defendant *Turkiye Is Bankasi AS* (hereinafter Turkish Bank); that the initial documentary requirement provided that the Turkish Bank furnish an authenticated cable stating that the amount drawn represents the amount it was required to pay under its guaranty of performance by Natisco for the delivery of coal in 1976 to Turkish Steel under the Coal Sales

Contract and providing that the expiration date was December 31, 1976; that on December 5, 1975, that documentary requirement was cancelled in its entirety and a substituted documentary requirement provided for a signed statement by the Turkish Bank stating that the amount drawn represents the amount it was obligated to pay under its guarantee validity (unlimited in time) to Turkish Steel for the sum of up to \$522,000 covering performance under the Coal Sales Contract (identified by reference numbers, date and parties) for the account of Natisco pertaining to shipments of 450 thousand tons of coal to be delivered in 1976 according to the delivery schedule in the Coal Sales Contract; that the substituted provisions also stated that the letter of credit would be automatically extendable for further periods of six months until the Turkish Bank's guaranty was returned to it.

The complaint additionally alleged that in March 1976 the Coal Sales Contract was amended in writing by Turkish Steel and Natisco without plaintiffs' consent which had the effect of altering and diminishing plaintiffs' rights under the Financing Contract and making plaintiffs' letter of credit a guaranty and performance bond as to the amended Coal Sales Contract.

The complaint further sets forth that after the parties (other than plaintiffs) failed to fulfill their obligations under the Financing Contract, on April 13, 1976, plaintiffs foreclosed upon the pledge of stock and thereby became the owner of all of the stock in one of the Alabama corporations and 98 percent of the stock in the other; that plaintiffs brought an action in Alabama against defendant Pettyjohn and others (who are not named defendants in the California action);

that the Alabama court found that the defendants in the Alabama proceedings had made shipments of coal under the Coal Sales Contract after April 13, 1976, without authority to make such shipments on behalf of Natisco which plaintiffs then owned by reason of the foreclosure of stock; that the Alabama court permanently restrained the Alabama defendant from acting under the name of Natisco, from using the letters of credit emanating from the Coal Sales Contract, from making shipments of coal under the Coal Sales Contract with Turkish Steel, and from referring to the Coal Sales Contract by its reference numbers.

The complaint alleges that the defendants (excluding Crocker) have entered into a common plan or scheme to obtain and usurp the benefits of the Coal Sales Contract and plaintiffs' letter of credit; to prevent Natisco from performing under, or obtaining the benefits of, the Coal Sales Contract; to represent that they were authorized to act on behalf of Natisco; and to create irreparable injury to plaintiffs including the loss of \$522,000 if demand is made upon the Crocker letter of credit.

In its answer to the above described complaint Crocker denied (upon the basis of lack of information and belief) the substantive allegations in the complaint as to the alleged wrongful acts of the other defendants, expressly denied that it knew or should have known that plaintiffs were the owners of Natisco after April 13, 1976, and that none of the defendants were authorized to act for Natisco after that date, and denied that plaintiffs will suffer irreparable harm if Crocker is not restrained from enforcing the letter of credit. Crocker, however, admitted that upon proper demand

by the Turkish Bank it would honor the plaintiffs' letter of credit.

In addition to submitting points and authorities in opposition to plaintiffs' (real parties in interest) application for a preliminary injunction, Crocker filed the declaration of Charles H. Hallock, vice president and manager of its Los Angeles international banking office. Mr. Hallock first stated that Crocker was a national banking association. He then summarized the transaction in point and the custom and usage of letters of credit in international banking. He particularly stressed the fact that banks, in dealing with a letter of credit, deal only with the documents and do not become involved in the underlying transaction. He further stated that international letters of credit are subject to a document entitled Uniform Customs and Practices and attached a copy to his declaration.

He further stated that no signed statements requiring payment upon the letter of credit had been received by Crocker as of November 10, 1976. He expressed his confidence that if Crocker failed or refused to honor the letter of credit the Turkish Bank would exercise a banker's offset against Crocker's deposits which deposits with the Turkish Bank total more than \$522,000 and Crocker would also suffer damage to its international reputation if it failed to honor the letter of credit.

The record before this court contains only the supplemental points and authorities filed by the plaintiffs and does not contain the first set of points and authorities or a transcript of the hearing. Crocker states and plaintiffs do not dispute that the only evidence presented by plaintiffs to the superior court was the above described verified complaint.

DISCUSSION

The foregoing reflects that there are three distinct contracts involved.

First, there is the Coal Sales Contract which is an agreement between Natisco and Turkish Steel.

Second, there is the Financing Contract, hereinbefore described, between the plaintiffs and the defendants, other than Crocker, who were, or had some interest as, sellers under the Coal Sales Contract.

Third, there is Crocker's letter of credit, which is independent of the underlying contract. (See *S. L. Jones & Co. v. Bond* (1923) 191 Cal. 551, 555; *Dynamics Corp. of Amer. v. Citizens & Southern Nat. Bank* (N.D.Ga. 1973) 356 F.Supp. 991, 995.)

Since the preliminary injunction enjoins Crocker's performance under that third contract, the nature of Crocker's letter of credit is of paramount importance.

Crocker first contends that the trial court was without jurisdiction to issue a preliminary injunction against it, a national banking association, by virtue of a federal statute (12 U.S.C. § 91 [hereinafter Section 91]) which provides, in pertinent part, that "no attachment, injunction, or execution, shall be issued against such association or its property before final judgment in any . . . action . . . in any State . . . court."

Crocker points to *Kemple v. Security First Nat. Bank* (1967) 249 Cal.App.2d 719, and *First Nat. Bank v. Superior Court* (1966) 240 Cal.App.2d 109, in support of its position in this respect. The cases of *Kemple* and *First Nat. Bank* involved an attempt to restrain the foreclosure of trust deeds in which the national banking association was the named bene-

ficiary and both held that California was without jurisdiction by reason of Section 91 to issue either a temporary restraining order or a preliminary injunction against a national banking association. In both *Kemple* and *First Nat. Bank* there was clearly an attempt to enjoin a national banking association's general assets.

Plaintiffs (real parties in interest) on the other hand point to *Drewes & Co. v. Ham & Seymour* (1925) 157 La. 861 [103 So. 241], which held that, despite the provisions of U.S. Revised Statutes section 5242 (now Section 91), a state court has the authority to issue a preliminary injunction restraining a national banking association from paying a draft under a letter of credit in a case where the bank has no interest in the controversy between the parties other than its obligation to pay out funds in accordance with the letter of credit.² In reaching that holding *Drewes* reviewed *Pacific National Bank v. Mixter* (1888) 124 U.S. 721 [31 L.Ed. 567, 8 S.Ct. 718] (no state attachment of funds of bank on deposit to its credit in another national bank); *Van Reed v. People's National Bank* (1904) 198 U.S. 554 [49 L.Ed. 1161, 25 S.Ct. 775] (no state attachment of assets and property of bank); and *Earle v. Pennsylvania* (1900) 178 U.S. 449 [44 L.Ed. 1146, 20 S.Ct. 915] (state court could attach property held by bank for another) and found the case before it similar to the fact situation in *Earle*.

Drewes apparently relied upon cases dealing with attachments because in that case the bank had a special deposit to cover draws upon the letter of credit. Thus, the *Drewes* court concluded that since the special deposit

²A similar issue was raised but expressly not decided in *Intern. Leather, etc. v. Chase Manhattan Bank* (1974) 45 A.D.2d 108 [356 N.Y.S.2d 314].

was not subject to be drawn against for all purposes, the special deposit was not an asset or property of the bank and hence a preliminary injunction could issue.

The traditional documentary letter of credit, which was present in *Drewes, supra*, is a method to insure payment for the sale of tangible goods. The buyer of the goods engages a bank to issue a letter of credit in favor of the seller (beneficiary). The resulting letter of credit is a contract between the bank and the beneficiary in which the bank agrees to honor drafts drawn by the seller upon the presentation of specified documents (i.e., bills of lading) which represent title to the goods sold. (Verkuil, *Bank Solvency and Guaranty Letters of Credit* (1973) 25 Stan.L.Rev. 716, 718; White & Summers, *Handbook of the Law under the Uniform Commercial Code* (1972) pp. 601-606; *The Uniform Commercial Code* (1962) 37 State Bar J. 119, 171.)

In contrast here the customers, plaintiffs (real parties in interest), were neither sellers nor buyers in the underlying coal sales transaction, engaged Crocker to issue a letter of credit in favor of the Turkish Bank who also was neither a seller nor a buyer. The Turkish Bank's connection was by reason of its "guarantee validity." The record is silent as to the terms and date of that "guarantee validity."

In short, apparently what is present in the instant case is a letter of credit of guarantee for a "guarantee validity" by the Turkish Bank of a third party seller's performance under a contract (the Coal Sales Contract). Upon presentation of the documentary requirement (the signed statement by the Turkish Bank in accordance with the provisions of the letter of credit),

Crocker is to honor drafts from its own funds. However, unlike the situation in a traditional letter of credit, as hereinbefore described, Crocker will receive no documents of title and hence cannot have, under any circumstances, a security interest in the goods sold. In addition, the present letter of credit differs from the traditional one in that there will be no draw upon the letter of credit if the underlying transaction proceeds as planned while with a traditional letter of credit a draw upon the letter of credit is contemplated upon performance of the underlying transaction. (See Verkuil, *Bank Solvency and Guaranty Letters of Credit*, *supra*, 25 Stan.L.Rev. 716, 721-723; Note, *Guaranty Letters of Credit: Problems and Possibilities* (1974) 16 Ariz.L.Rev. 822, 827.) Nevertheless under the present letter of credit as well as under the traditional letter of credit, the issuer's liability to the beneficiary is a primary one and not that of a guarantor.³

³Admittedly there is some question about the true nature of the letter of credit in the present case. The function of Crocker's letter of credit is similar to a performance bond. (Cf. Note, *Guaranty Letters of Credit: Problems and Possibilities*, *supra*, 16 Ariz.L.Rev. 822, 827-829.)

On the other hand, difficulty in precise classification is understandable in that the letter of credit has long been a flexible device utilized by the commercial community to meet its needs in a wide variety of situations. Neither the Uniform Commercial Code nor the California Commercial Code attempted to establish rigid rules for letters of credit. Rather the intent was merely to state fundamental principles and to provide a basic framework for future change. (Cf. official com. to U. Com. Code, § 5-102; Williams, Intro. Com., West's Ann. Cal. U. Com. Code, Div. 5, Letters of Credit.)

As this court deals only with the narrow issue of whether California may issue a preliminary injunction against a national banking association, we need not decide if the parties' classification of the document as a letter of credit is, indeed, correct (cf. *Wichita Eagle & B. Pub. Co., Inc. v. Pacific Nat. Bk., San Fran.* (9th Cir. 1974) 493 F.2d 1285) for any other classification would only serve to reinforce our conclusion, *infra*, that the bank's property and assets are involved.

(*S. L. Jones & Co. v. Bond*, *supra*, 191 Cal. 551; Cal. U. Com. Code, § 5103, subd. (1)(a).)

Here Crocker has simply agreed to pay the Turkish Bank if a proper demand upon the letter of credit is made and Crocker will be required to engage its own credit to meet that contractual obligation. The fact that Crocker's position as to the present letter of credit may be somewhat less secure in that it will not have any security interest in the goods sold serves to accentuate the fact of its direct liability. Crocker's expectation of immediate reimbursement from plaintiffs (real parties in interest) does not diminish its obligations under the letter of credit. (Cf. official com. to U. Com. Code, § 5-117.) Since there is no evidence in the record before this court which would support a finding that there is a special deposit as was the case in *Drewes*, *supra*, Crocker's primary liability under the letter of credit can only mean that its property is involved. Hence the facts of this case are more closely analogous to *Kemple*, *supra*, and *First Nat. Bank*, *supra*, than to *Drewes*, *supra*.

Moreover, Crocker faces the possibility that the Turkish Bank will exercise a banker's offset if it is not permitted to honor otherwise proper draws upon the letter of credit.

In addition, the obvious purpose of the prohibition in Section 91 against a state court's interference with the operation of a national banking association is to protect "them against suits or proceedings in state courts by which their efficiency would be impaired." (*Dennis v. First Nat. Bk. of Seattle* (1900) 127 Cal. 453, 455.) Since Crocker's contractual obligations under its letter of credit require that it engage its

own credit for the honor of the letter of credit and as Crocker may face loss of its assets in a foreign bank, the issuance of a preliminary injunction could impair the efficiency of a national banking association.

Accordingly, by reason of the foregoing, we conclude that under the circumstances of the instant case Section 91 forbids such action by a state court.

In view of our decision that as to Crocker, a national banking association, the superior court's issuance of a preliminary injunction was in violation of Section 91, we do not reach Crocker's other contentions including whether or not section 5114 of the Commercial Code precludes the issuance of an injunction. Our decision, however, is limited to defendant Crocker only. (Cf. *Steinmeyer v. Warner Cons. Corp.* (1974) 42 Cal.App.3d 515.)

DISPOSITION

Let a peremptory writ of prohibition issue directing that the superior court vacate and annul, as to defendant Crocker National Bank only, its order of November 15, 1976, granting plaintiffs' (real parties in interest) motion for a preliminary injunction in Los Angeles Superior Court case No. SOC 44418 entitled *Thomas J. Palmer, Inc., et al. v. Charles S. Pettyjohn, et al.* and thereafter refrain from further proceedings to enforce said order as to defendant Crocker National Bank only.

CERTIFIED FOR PUBLICATION

HANSON, J.

We concur:

LILLIE, Acting P.J.
THOMPSON, J.

**Exhibit "B". Final Order of California Supreme Court,
Dated May 26, 1977.**

ORDER DUE
May 31, 1977

ORDER DENYING HEARING

After Judgment by the Court of Appeal
2nd District, Division 1, Civil No. 49909
In the Supreme Court of the State of California

In Bank

Crocker National Bank, Petitioner v. The Superior Court of Los Angeles County, Respondent; Thomas J. Palmer Incorporated et al., Real Parties in Interest.

Real Parties in Interest's petition for hearing DENIED.

Supreme Court

Filed

May 26, 1977

G. E. Bishel, Clerk
Deputy

I, G. E. BISHEL, Clerk of the Supreme Court of the State of California, do hereby certify that the preceding is a true copy of an order of this Court, as shown by the records of my office.

Witness my hand and the seal of the Court this 16th day of August A.D. 1977.

Clerk

By /s/ W. Johnson
Deputy Clerk

BIRD
Chief Justice

**Exhibit "C". Preliminary Injunction, Dated
November 15, 1976.**

**SUPERIOR COURT OF THE STATE OF
CALIFORNIA FOR THE COUNTY OF
LOS ANGELES**

THOMAS J. PALMER, INC., a corporation, LAKE CONSTRUCTION CO., INC., a corporation, KENNETH G. WALKER, an individual, THOMAS J. PALMER, an individual, Plaintiffs, vs. CHARLES S. PETTYJOHN, an individual; SMITH COAL SALES COMPANY, a corporation; EDWARD E. CRAIG, JR., an individual; WILLIAMS & RUBIN, a corporation; TURKISH IRON & STEEL WORKS, also known as TURKIYE DEMIR VE CELIK ISLETMELERI GENEL MUDURLUGO; HARRY GEISSINGER, III, an individual; TURKIYE IS BANKASI AS; VULCAN ENERGY RESOURCES CORPORATION, a corporation; CROCKER NATIONAL BANK, a corporation; JOHN DOES 1 to 50, inclusive; JOHN DOE CORPORATIONS, 1 to 50, inclusive, Defendants. No. SOC 44418.

The application of the plaintiffs for preliminary injunction made herein came on regularly to be heard this 12th day of November, 1976 pursuant to an Order to Show Cause issued by this court on October 29, 1976.

Baum & Cohen by Leonard P. Baum appeared as counsel for the plaintiffs and Morrison & Foerster by Ronald F. Brot, appeared as counsel for the defendant Crocker National Bank; the remaining defendants, other than the fictitiously named defendants and the defendant Crocker National Bank, have been served

with a copy of the Summons and Complaint, Memorandum of Points and Authorities and the Order to Show Cause issued in this matter as required by the Order to Show Cause issued by this court on October 29, 1976.

Proof having been made to the satisfaction of the court, and good cause appearing therefor:

IT IS HEREBY ORDERED that during the pendency of this action the defendants, and each of them, and their officers, agents, representatives and all persons acting in concert or participating with them, shall be and they are hereby enjoined and restrained from engaging in, committing or performing, directly or indirectly, or by any means whatsoever, any of the following acts:

(a) From disbursing or paying, or causing to be disbursed or paid, any sums of money, credit or other emoluments under or pursuant to any of the provisions of that certain letter of credit represented or evidenced by a written "application and security agreement for a commercial letter of credit" dated December 4, 1975, No. 737415, and/or a letter of credit dated December 4, 1975, and/or an amendment thereto dated December 5, 1975, issued by Crocker National Bank, a copy of said documents being attached to the application made herein.

(b) From engaging in any act or omission to act which might cause any honoring of said letter of credit or which might cause the disbursement of any money, credit or other emoluments thereunder by Crocker National Bank.

Providing further that plaintiffs herein shall file a written undertaking in the sum of \$25,000.00 as required by Code of Civil Procedure Section 529, to indemnify the defendants for such damages as they may sustain by reason of this injunction if the court finally decides that plaintiff is not entitled thereto. The court retaining jurisdiction to modify said bond amount upon 24 hours notice of application therefor.

DATED: November 15, 1976.

MAX Z. WISOT

JUDGE OF THE SUPERIOR COURT